

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

MID-AMERICA AUTO AUCTION <sup>1/</sup>

Employer

and

Case 9-RC-17409

TEAMSTERS LOCAL NO. 89, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO <sup>2/</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, <sup>3/</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

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<sup>1/</sup> The name of the Employer appears as amended at the hearing.

<sup>2/</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3/</sup> The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a corporation, is engaged in the sale of automobiles by auction at facilities located at 3515 Newburg Road and Ship Street at Seventh in Louisville, Kentucky, where it currently employs approximately 125 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees at issue in this proceeding.

The Petitioner seeks to represent a unit comprised of approximately 39 employees in the reconditioning department, 12 employees in the lot operations department, and 4 check-in employees and the roll-back driver employed in the transportation department. The Employer maintains that the smallest appropriate unit must encompass all of its operations employees,<sup>4/</sup> comprised of those in its reconditioning, lot operations and transportation departments. Thus, in addition to the employees sought by the Petitioner, the Employer would include approximately 60 pick-up/delivery drivers and 4 van drivers employed in its transportation department.<sup>5/</sup> The Petitioner, contrary to the Employer, would also exclude the van drivers, the check-in leader and two lot leaders on the basis that they are supervisors within the meaning of Section 2(11) of the Act.

For reasons fully set forth below, I conclude that the unit sought by the Petitioner is not appropriate for purposes of collective bargaining and that the smallest appropriate unit which encompasses the employees sought by the Petitioner must include all of the Employer's operations employees. In addition, the Petitioner has failed to meet its burden establishing that the van drivers, check-in leader and lot leaders are statutory supervisors.

The general manager, Jim Allen, has overall supervisory responsibility for the Employer's Newburg Road and Ship Street<sup>6/</sup> facilities. Allen's immediate subordinates are Patty Hatfield, supervisor of transportation; Greg Sharp, lot operations manager; and

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<sup>4/</sup> The operations employees as opposed to the administrative, managerial, office clerical and sales/marketing employees, are directly involved in the physical processing of automobiles through the Employer's facility.

<sup>5/</sup> The dispatcher is employed in the transportation department but the record indicates that he is not a statutory employee. Inasmuch as neither party contends that the dispatcher should be included in the unit, I shall exclude him.

<sup>6/</sup> The Ship Street facility is a temporary automobile storage lot where only a condition report writer and a guard are regularly assigned.

Vick Gentry, reconditioning manager. Ken Bullock, body shop manager, and Tyson Tyler, detail supervisor, report directly to Gentry.<sup>7/</sup>

The function of the reconditioning department is to improve the mechanical and cosmetic condition of automobiles being processed through the Newburg Road facility. Bullock supervises two painters, a buffer and a metal technician in the body shop. Although the body shop employees are paid an hourly rate (\$8.50 for metal technicians and \$10.15 for painters and buffers), the number of hours for which they are paid is determined by a set rate per job pursuant to the Mitchell Estimating System regardless of the completion time. Similarly, the 27 detailers who work under Tyler in the detail shop are paid by the number of automobiles they clean. Besides Bullock and Tyson, Gentry also directly supervises two mechanics who earn \$8.00 to \$15.00 per hour, two sales coordinators who are paid \$6.37 and \$12.01 per hour, and two condition report writers, who earn \$7.00 to \$13.13 per hour.<sup>8/</sup> The condition report writers prepare damage reports for automobiles entering the Employer's facilities. The record is unclear as to the function of the sale coordinators, but it appears that they are responsible for effectuating and recording accurate and timely movement of vehicles in preparation for auctions and for providing auction information to the Employer's customers. The body shop employees and mechanics are the Employer's only skilled employees. The remainder of the operations employees are unskilled. The record reflects that the body shop, detail, mechanic and condition report employees have only incidental contact with employees outside of the reconditioning department but that the sales coordinators have substantial work-related contact with pick-up/delivery drivers in the transportation department and lot drivers in the lot operations department. The body shop employees, detailers and mechanics work from 7 a.m. to 3 p.m. while the sales coordinators and the condition report writers work from 8 a.m. to 5 p.m.

The lot operations department, headed by Greg Sharp, is comprised of approximately eight lot drivers, two lot leaders, a gas truck driver, a support truck driver, a custodian and a maintenance employee. The lot drivers, who earn between \$5.30 and \$7.01, are primarily responsible for moving vehicles within the Newburg Road facility once they have been initially brought to that location by pick-up/delivery drivers. In fact, approximately 99 percent of the lot drivers' work is restricted to vehicle movements within the Newburg Road facility. The remainder of their work involves the rare emergency movement of vehicles to and from that facility. It appears that Sharp is responsible for assigning the lot drivers to one of two teams each headed by a lot leader, who earns \$8 per hour, to accomplish this movement. The lot drivers also participate as members of sales teams along with part-time pick-up/delivery drivers and temporary

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<sup>7/</sup> The parties stipulated, and the record shows, that Allen, Hatfield, Sharp, Gentry, Bullock and Tyler are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

<sup>8/</sup> A sales coordinator and a condition report writer are directly supervised by Charlie Rorick, fleet lease manager. The record does not reflect the identity of Rorick's immediate superior or whether he is included within the reconditioning department. However, the parties agree, and I find, that all sales coordinators and condition report writers should be included in the unit.

employees <sup>9/</sup> on auction days to accomplish the movement of vehicles through the auction arena at Newburg Road. The lot leaders and lot drivers begin work at 6 a.m., 7 a.m. or 8 a.m. depending on whether an auction is scheduled for the day and they normally get off work about 9 hours after their start time. The gas truck driver is responsible for fueling automobiles. The support truck driver assists other drivers in starting vehicles, repairing flat tires and pushing disabled vehicles. The record does not specify in any detail the functions of the maintenance employee or the custodian, but I infer, based on the general nature of such occupations in the context of the Employer's operations, that the former is responsible for maintaining the Employer's equipment and buildings while the latter is responsible for cleaning the Employer's premises. The maintenance employee works from 7 a.m. to 4 p.m. earning between \$8 and \$10.45 per hour while the custodian works from 8 a.m. to 5 p.m. earning \$6 to \$7.96 per hour. The record does not reflect the working hours or wage rates of the gas or support truck drivers but because the parties referred to them on the record as being part of the generic group of lot drivers, I infer that their wages and hours are similar to those employees. The Employer also uses three part-time pick-up/delivery drivers during auctions to assist the support truck driver manning two trucks used to start cars with dead batteries and move disabled cars through the auction arena.

The record indicates that the lot leaders, to some extent, direct the work of the lot drivers. In order to accomplish the movement of automobiles, Sharp prepares a list of vehicles specifying their current location and intended destination. This list is given to the lot leaders who instruct their respective teams as to which vehicles to move to which location. The record is not specific as to the manner or nature of the instructions given but it appears that the assignment of lot drivers to a particular lot leader's team is somewhat permanent. Although the lot leaders may have occasion to report employee problems to Sharp, the record demonstrates that Sharp would then independently investigate the matter and decide on the appropriate action. Sharp prepares all of the evaluations for employees under his supervision and is the person who grants or denies their requests for time off. The record indicates that Sharp, when talking to lot drivers, has referred to the lot leaders as assistant lot supervisors.

The transportation department, headed by Patty Hatfield, is responsible for the check-in function and the movement of automobiles onto and off of the Newburg Road facility. The transportation department employs about 60 pick-up/delivery drivers, a rollback driver, 4 van drivers, a dispatcher, 4 check-in employees and a check-in leader. It appears that approximately 35 pick-up/delivery drivers are part-time. In addition to their being involved in the movement of vehicles off of and onto the Newburg Road facility, they, along with the temporary employees, serve on sales teams during auctions transporting vehicles through the auction arena.

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<sup>9/</sup> Employees employed through a temporary employment agency. Neither party apparently would include these employees in the unit. In any event, these employees are not properly included in the Unit. See *Greenhoot, Inc.*, 205 NLRB 250 (1973). Accordingly, I shall exclude them.

It appears that the primary function of the check-in employees is to maintain an electronic inventory of vehicles located at the Newburg Road facility. Thus, when the pick-up/delivery drivers bring vehicles to the check-in area, the check-in employees use voice activated computer equipment while walking around the vehicle to electronically record the vehicle identification number and other identifying characteristics before the vehicle is given a stock number. Similarly, when vehicles are removed from the Newburg Road facility, the check-in employees record their departure. The check-in employees begin work at 8 a.m. but the record does not disclose their normal quitting time.<sup>10/</sup> They earn from \$6 to \$8.50 while the check-in leader earns 7.25 to \$11 per hour. Following the check-in of a vehicle, it is driven by a pick-up/delivery driver to its initial location at the Newburg Road facility and thereafter any movement of the vehicle, until it is sold and ready to be removed from the facility, is performed by lot drivers.

The employment summary for Doris Perkins, the check-in leader, indicates that she currently occupies the position of check-in supervisor. Hatfield testified that Perkins is part of supervision or management. Perkins is responsible for insuring the proper flow of vehicles through check-in and for taking care of day-to-day problems involving improperly checked-in vehicles. Perkins accumulates data and produces reports on the activities of the pick-up/delivery drivers and the van drivers and posts charges for pick-up and delivery invoices. Perkins trains check-in employees but the record does not describe the nature of such training. She directs the work of the check-in employees, but other than prioritizing the vehicles to be checked in, the record does not reflect the manner or means by which she directs the work of the check-in employees or how the prioritization is accomplished. Perkins may bring employee problems to the attention of Hatfield who would then independently investigate the situation and determine what, if any, action is appropriate. Perkins may grant or deny check-in employees' requests for time off in Hatfield's absence but the record does not reflect how often this occurs. However, Hatfield, not Perkins, prepares evaluations for all of the check-in employees.

The pick-up/delivery drivers work with the van drivers to move vehicles to and from the Newburg Road facility. The sales department notifies the dispatcher of the locations, types and numbers of vehicles that need to be picked up or delivered off site.<sup>11/</sup> Dispatch then assigns pick-up/delivery drivers to various vans and they are driven in the vans operated by van drivers to the dealership where vehicles are to be picked up. The van drivers and the dealership handle the documentation for the pick-up. Upon obtaining the keys to the proper vehicles, the van driver assigns the pick-up/ delivery drivers to specific vehicles which they individually drive back to the Newburg Road facility.<sup>12/</sup> In the event pick-ups are to be made from more than one dealer, the van driver decides

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<sup>10/</sup> Because the check-in leader works from 8 am to 5 pm, it would appear that the check-in employees work the same hours.

<sup>11/</sup> Off site could be an automobile dealership or the Ship Street facility.

<sup>12/</sup> The record suggests that this assignment is accomplished by having the pick-up/delivery drivers select keys out of a box.

which pick-up/delivery drivers to use at a particular dealership by distributing pick-up slips <sup>13/</sup> to them. The record does not reflect how the pick-up/ delivery drivers are assigned to vehicles to be delivered from the Newburg Road facility. However, it is evident that in this reverse process, the van drivers proceed to the dealership and transport the pick-up/delivery drivers back to the Employer's facility. Except for the above-described assignment of pick-up/delivery drivers to vehicles at the dealership, there is no evidence that the van drivers possess any indicia of supervisory status. The pick-up/delivery drivers earn \$5.30 to 5.70 per hour while the van drivers make \$6 to \$7.30 an hour. The van drivers begin work at 8 a.m. The full time pick-up delivery/drivers start at 8:30 a.m. and the part-time pick-up/delivery drivers may start work anytime between 8:30 a.m. and noon.

The rollback driver similarly performs the function of transporting vehicles onto and off of the Newburg Road facility. He drives a truck on which multiple automobiles may be loaded and therefore does not require the assistance of a van driver. The rollback driver begins work at 8 a.m. and earns \$6.50 to \$8 per hour.

The Employer conducts five regularly scheduled auctions every 2 weeks. In preparation for the auction, lot drivers move vehicles which have already been processed by the reconditioning department through the car wash to the auction staging area. The lot operations manager, Greg Sharp, requisitions part-time pick-up/delivery drivers and temporary employees (sales drivers) from dispatch and assigns them in approximately equal numbers to sales teams which also include two lot drivers. One lot driver is designated as the sales team leader and assigns the sales drivers in a predetermined order to drive particular vehicles from the sales staging area to the auction arena. After the vehicle is sold, it is returned to the staging area by the sales driver. The second lot driver on a team is responsible for starting the vehicles before they are assigned to a sales driver. The support truck drivers and the gas truck driver are also available to fuel or move vehicles during the auction. The record does not disclose what participation, if any, the lot leaders have in the auction process. Following the conclusion of the auction, the lot drivers and temporary employees stage vehicles for the next auction. Sharp is responsible for releasing the sales drivers from work following auctions. Full-time pick-up/delivery drivers do not participate in the auctions.

The record reflects that during the period from March 1, 1991 through the date of the hearing, there were 46 permanent transfers of employees among various positions at the Newburg Road facility. There were 11 permanent transfers of pick-up/delivery drivers to or from positions in the reconditioning or lot operations departments. There were no permanent transfers involving the van driver position. The evidence indicates that the Employer does not use temporary transfers to balance its manpower requirements in the sense that a particular employee may be temporarily reassigned to fill a discrete vacancy in another job classification. Rather, the Employer uses pick-up/delivery drivers to augment, as opposed to replace, its complement of lot drivers when workload makes it

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<sup>13/</sup> A pick-up slip is a document used for each pick-up which identifies the origin of the pick-up and is given to the check-in employees upon arrival at the Newburg Road facility.

necessary. In such a situation, Sharp requisitions pick-up/delivery drivers from dispatch and those employees are sent to the lot to work at the direction of lot employees. Because the Employer's manpower requirements fluctuate on a regular basis, it uses pick-up/delivery drivers to provide the necessary flexibility in its employee complement. The record evidence concerning the frequency or duration of the use of pick-up/delivery drivers for lot operations is in conflict. A lot driver estimated that it occurred once in 2 months, the lot operations manager characterized it as daily and a pick-up/delivery driver testified that it happened once or twice a week for about 45 minutes each time. Although this evidence is in conflict, I find, based on the record as a whole, that the assignment of pick-up/delivery drivers to perform lot operations work is regular and substantial.

The Employer's human resources manager, Bill VanCleve, is located at the Newburg Road facility. VanCleve is responsible for all personnel functions for both the Newburg Road and the Ship Street locations. All operations employees are subject to the same employee handbook which sets forth the Employer's labor relations policies. The full-time employees are eligible to participate in a common benefit plan which includes insurance, vacation and sick pay.

## ANALYSIS

### (a) Supervisory Issues:

Section 2(11) of the Act defines a supervisor as a person:

. . . having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .

Section 2(11) is to be interpreted in the disjunctive and the possession of any one of the twelve indicia listed in that section places the individual vested with this authority in the supervisory class. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949). See also, *Allen Services Co.*, 314 NLRB 1060 (1994); *Queen Mary*, 317 NLRB 1303 (1995). I am also mindful that supervisory status cannot be measured in individually distinct terms, nor can hard-and-fast rules be laid down. In each circumstance, the differentiation must be made between the exercise of independent judgment and the routine following of instructions, between effective recommendation and forceful suggestion and between the appearance of supervision and supervision in fact. See, e.g., *Chevron Shipping Co.*, 317 NLRB 379 (1995); *J.C. Brock Corp.*, 314 NLRB 157 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992); *Quadrex Environmental Company*, 308 NLRB 101 (1992); *McCullough Environmental Services*, 306 NLRB 565 (1992). Moreover, it is well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Bennett Industries*, 313 NLRB 1363 (1994); *Ohio*

*Masonic Home*, 295 NLRB 390, 393 (1989). As described in detail below, based upon a careful review of the record evidence and an analysis of controlling legal precedent, I conclude that the Petitioner failed to meet its burden establishing that the van drivers, lot leaders and check-in leader are supervisors within the meaning of Section 2(11) of the Act.

The van drivers, lot leaders and the check-in leader direct the work of other employees only to the extent that they assign employees to drive or check-in a particular vehicle. The record suggests that in some cases, the assignment may be as simple as allowing pick-up/delivery drivers to select keys from a box. Inasmuch as the record does not reflect what, if any, independent judgment the van drivers, lot leaders and the check-in leader exercise in making these assignments and it appears that the vehicles as well as the employees are interchangeable, I conclude that the assignment of such work does not require the use of independent judgment and does not vest those making the assignments with supervisory authority. *Gem Urethane Corp.*, 284 NLRB 1349 (1987); *Greyhound Airport Services*, 189 NLRB 291 (1971); *Sears, Roebuck and Company*, 292 NLRB 753 (1989). Moreover, the role of lot leaders and the check-in leader in reporting employee problems, in the absence of authority to independently investigate or act, does not confer supervisory status on them. *Pepsi-Cola Bottling Co.*, 154 NLRB 490 (1965); *Tree-Free Fiber Co.*, 328 NLRB No. 51 (1999). The fact that Sharp described the lot leaders as assistant supervisors, that a personnel record designates Perkins as the check-in supervisor or that Hatfield testified that the check-in leader was part of supervision or management is not dispositive of their status. It is well-settled that it is the actual possession of Section 2(11) authority, rather than a job title or holding out an individual as a supervisor which controls a finding of supervisory status. *Blue Star Ready-Mix Concrete Corporation*, 305 NLRB 429 (1991); *D.H. Overmyer Co., Inc.*, 196 NLRB 789 (1971). Although the check-in leader has authority to grant an employee time off when Hatfield is absent from the facility, the record does not reflect the frequency of the exercise of such authority. I am unable, therefore, to conclude that the evidence is sufficient to confer supervisory status on this basis. *Commercial Fleet Wash Inc.*, 190 NLRB 326 (1971); *Goshen Litho, Inc.*, 196 NLRB 977 (1972). Similarly, the check-in leader's role in training employees does not render her a supervisor. *Leather Products, Inc.*, 200 NLRB 495, 497 (1972).

The Petitioner's statement in its brief that the possession of any of the indicia in Section 2(11) of the Act is sufficient to confer supervisory status is correct. See, e.g., *NLRB v. Fullerton Publishing Company*, 283 F.2d 545 (9<sup>th</sup> Cir. 1960) (cited by the Petitioner in its brief). Certainly, as asserted by the Petitioner, the independent authority to assign or direct work or to discipline employees would confer supervisory status on an individual exercising such authority. See, e.g., *NLRB v. Budd Mfg. Co.*, 169 F.2d 571 (6<sup>th</sup> Cir. 1948) (cited by the Petitioner in its brief). However, the individuals at issue here do not possess, or utilize with independent judgment, any of the indicia of supervisory authority set forth in Section 2(11) of the Act. The record discloses that any work assignments made by the individuals in dispute are routine. Likewise, any direction of other employees by the van drivers, lot leaders and the check-in leader is routine and does not require the exercise of independent judgment. Although the record shows that,



at least, the check-in leader has occasionally granted employees time off in the absence of the statutory supervisor, such sporadic exercise of authority does not confer supervisory status. *Adelphi University*, 195 NLRB 639 (1972), cited by the Petitioner in its brief, does not require a contrary result. In *Adelphi*, the Board found department chairmen at a university who possessed and exercised a number of the primary indicia set forth in Section 2(11) of the Act to be supervisors. Here, the individual in dispute only occasionally grants employees time off in the absence of the admitted supervisors. The authority to occasionally allow employees time off, under the circumstances here, is not sufficient to confer supervisory status. *Goshen Litho, Inc.*, supra.

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the van drivers, lot leaders and the check-in leader are not supervisors within the meaning of Section 2(11) of the Act. They do not have the authority to hire, discharge or discipline employees or to direct their work in a manner requiring the use of independent judgment. Accordingly, I shall include them in the unit.

## ANALYSIS

### (a) Unit Composition:

Section 9(a) of the Act requires only that the unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by the Petitioner constitute an appropriate unit.

The Petitioner seeks a unit limited to reconditioning employees, lot operations employees, check-in employees and the rollback driver. Although the Employer agrees that these employees must be included in any appropriate unit, it contends that the unit must also include van drivers and pick-up/delivery drivers. In reaching my decision on this issue, I need only be concerned with whether a unit limited to that sought by the Petitioner is appropriate. The fact that the broader unit urged by the Employer may also be appropriate has no bearing on whether the petitioned-for unit may also be appropriate. In *Overnite*, supra, the Board analyzed whether the petitioned-for unit of drivers and dock workers, excluding mechanics, was appropriate by considering whether the mechanics could constitute a separate appropriate unit. Upon finding that the mechanics could constitute a separate unit, the Board concluded that the mechanics did not share such a close community of interest with the drivers and dock workers to require their

inclusion in the unit sought by the petitioning labor organization. Thus, to determine whether the employees sought by the Petitioner may constitute an appropriate unit, I have considered whether the van drivers and pick-up/delivery drivers could constitute a separate appropriate unit excluding all those employees sought by the Petitioner. In determining that a group of employees possess a sufficient community of interest apart from others to warrant their representation in a separate unit, the Board examines such factors as mutuality of interest in wages, hours and working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Capri Sun, Inc.*, 330 NLRB No. 158 (2000); *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994); *Franklin Mint Corp.*, 254 NLRB 714 (1981).

In the instant case, the van drivers, pick-up/delivery drivers and the petitioned-for employees share the same benefits and the same general labor relations policies set forth in the employee handbook. In addition, the employees in dispute share the same supervision with check-in employees and the rollback driver sought by the Petitioner. I am particularly mindful of the strong link between the lot drivers sought by the Petitioner and the pick-up/delivery drivers whom the Petitioner would exclude from the unit. The wage rates of the pick-up/delivery drivers are closer to those of the lot drivers than they are to condition report writers, custodians, maintenance employees, sales coordinators and check-in employees whom the Petitioner seeks to include. Moreover, it appears that when the pick-up/delivery drivers work auctions, they fall under the supervisory control of Sharp who also supervises the lot drivers sought by the Petitioner and determines when the pick-up/delivery drivers may leave work following the auction. The pick-up/delivery drivers, van drivers and lot drivers share the same skill level and perform similar functions associated with transporting vehicles. When working auctions, all drivers have frequent and functionally integrated contact in the process of moving vehicles through the auction arena. The regular and substantial use of pick-up/delivery drivers to augment the complement of lot drivers is also indicative of a high level of interchange between them. All of these factors militate strongly in favor of a conclusion that the van drivers and pick-up/delivery drivers may not constitute a separate appropriate unit separate from other employees sought by the Petitioner. *University of Rochester*, 222 NLRB 532 (1976). Moreover, the disputed employees work in the transportation department in which a number of employees sought by the Petitioner also work. The fact that the van drivers and pick-up/delivery drivers begin work a half hour later than any of the petitioned-for employees and that they drive vehicles outside of the Employer's premises is insufficient, when viewed in light of the strong links between them and the other operations employees, to warrant a finding that they may appropriately enjoy separate representation. I also find noteworthy the fact that the Petitioner does not seek to represent a specific department or administrative division of the Employer's operation, but seeks to represent various employees assigned to all three major operational departments while excluding other employees assigned to the same departments.

Cf. *University of Rochester*, supra.

The cases cited by the Petitioner in its brief do not support its position that the unit it seeks to represent is appropriate. I agree that *NLRB v. Hearst Publications*, 322 U.S. 111 (1944); *Uyeda v. Brooks*, 365 F.2d 326 (6<sup>th</sup> Cir. 1966); and *Morand Bros. Beverage Co.*, supra, cited by the Petitioner in its brief, gives the Board considerable discretion in determining appropriate units based on the community of interest of the employees involved and that the unit sought need only be appropriate. However, the employees, whom the Petitioner seeks to represent here, do not constitute a distinct group or departmental unit but work with and share a substantial community of interest with the employees the Petitioner would exclude. Moreover, the employees, as previously found, whom the Petitioner would exclude, do not constitute a separate appropriate unit apart from the employees the Petitioner seeks to represent. *Capri Sun, Inc.*, supra; *Overnite Transportation Company*, supra.

The Petitioner is also correct that there is a presumption that a single facility unit is appropriate. See, e.g., *Frisch's Big Boy, III-Mac, Inc.*, 147 NLRB 551 (1964), and *Purity Supreme, Inc.*, 197 NLRB 915 (1972) (cited by the Petitioner in its brief). However, contrary to the suggestion in the Petitioner's brief, the evidence does not establish that the employees it seeks to represent work in a single facility. Although employees are assigned to different departments, they work together for the most part at the Employer's Newburg Road location. Indeed, only a guard and one condition report writer are assigned to the Ship and Seventh Street facility. Thus, the issue here is not whether a single facility unit is appropriate but whether the employees whom the Petitioner seeks to represent, who work in the various operational departments of the Employer's business, excluding other employees who work in the same departments, constitute an appropriate unit. I find they do not. The fact that the pick up/delivery drivers transport vehicles to and from outside vendors does not justify excluding them from the unit. They work out of the Newburg Road facility as do the van drivers and the employees whom the Petitioner seeks to represent.

*Davis Transport, Inc.*, 169 NLRB 557 (1968); *NLRB v. Crockett-Bradley, Inc.*, 523 F.2d 449 (5<sup>th</sup> Cir. 1975); and *NLRB v. Sunnyland Refining Company*, 474 F.2d 407 (5<sup>th</sup> Cir. 1973), cited by the Petitioner in its brief, are inapposite. In these cases, the Board and Courts found that truck drivers need not be included in the unit with other employees where the drivers worked under separate supervision and had little contact with other unit employees. Here, the Employer's entire operation is integrated and all work, including the transportation of vehicles, is related to the sale (auction) of automobiles. The disputed employees do not drive trucks transporting products produced by the Employer, but merely transport automobiles which the Employer sells at auctions. Finally, *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), cited by the Petitioner in its brief, does not support its position that the van and pick-up/delivery drivers should be excluded from the unit. In *Pittsburgh Plate Glass*, the Supreme Court held that retirees did not have any interests with active employees. Here, all employees in dispute are currently active employees.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the van and

pick-up/delivery drivers, who work in the transportation department with other employees sought by the Petitioner and who share a substantial community of interest with all other unit employees, must be included in the unit. Accordingly, I shall include them in the unit.

#### CONCLUSION:

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

**All operations employees in the reconditioning, lot operations and transportation departments, including sales coordinators, condition report writers, van and pick-up/delivery drivers, lot leaders, van drivers (leaders) and the check-in leader, employed by the Employer at its facilities located at 3515 Newburg Road and Ship Street at Seventh in Louisville Kentucky, excluding all office clerical employees, dispatchers, employees of temporary agencies and all professional employees, guards and supervisors as defined in the Act.**

Accordingly, I shall direct an election among the employees in such unit. <sup>14/</sup>

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than

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<sup>14/</sup> As the unit found appropriate is larger than that requested, the Petitioner is accorded 10 days from the date of this decision in which to submit the requisite showing of interest to proceed to an election. In the event that the Petitioner does not wish to proceed to an election in the broader unit, it may withdraw its petition without prejudice within 7 days of this decision.

12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Teamsters Local No. 89, affiliated with the International Brotherhood of Teamsters, AFL-CIO.**

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 9 who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of interest in the unit found appropriate. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **July 14, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 21, 2000**.

Dated at Cincinnati, Ohio this 7<sup>th</sup> day of July 2000.

/s/ Edward C. Verst

Edward C. Verst, Acting Regional Director  
Region 9, National Labor Relations Board  
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